IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
APPEAL AGAINST Order No. 374 of 2003
(Lodging No. 64 of 2003)

Smt. Shanti Singh Bhandari
W/o Sri Mohan Singh
R/o Kanalichhina Bazar
District Pithoragarh ….. Appellant

Versus

Smt. Rewati Joshi
W/o Sri jagdish Chandra Joshi
R/o Village Suroli
Post Officer Algara Tehsil Didihat
District Pithoragarh & four others
…. Respondents

Hon'ble M.M. Ghildiyal J.

By means of this appeal the appellant has challenged the judgment and order dated 21.10.2003 passed by learned District Judge, Pithoragarh in Election Petition No. 34 of 2003.

Heard Sri L.P. Naithani learned Senior Counsel assisted by Sri Manoj Tiwari learned counsel for the petitioner and Sri D.S. Patni, Sri M.S. Pal and Sri G.B. Pandey learned counsel for the respondent.

Brief facts of the case are that the election to the Office of Pramukh Kshettra Punchayat, Kanalichhina, District Pithoragarh held on 17.05.2003. The appellant along with four others contested the election. In the first round the appellant got 13 first preference votes, Smt. Rewti respondent n.1 got 12 first preference votes, Smt. Durga Devi got 6 first preference votes, Smt. Munni Pande got 2 preference vote and Smt. Asha Pal got 2 first preference vote.

In the second round, a candidate scoring the lowest vote was eliminated, however, no contesting candidate got any transfer vote as no second or third preference votes was cast. After second elimination of another candidate Smt. Santi Singh Bhandari got 1 vote and Smt. Rewti Joshi also got 1 vote. At the last round of scoring, Smt. Santi Singh Bhandari got 15 and Smt. Rewti Joshi got 13 votes.

Since Smt. Santi Singh Bhandari had scored highest number of votes at the last round of counting as such she was declared elected on 17.05.2003. An appeal was filed by Smt. Rewti Joshi who got 13 votes before learned District Judge, Pithoragarh on the ground that the quota for declaring a candidate elected was 19 and since Smt santi Singh Bhandari could not get 19 votes, she could not have been declared elected as Pramukh.

Learned District Judge, Pithoragarh vide his judgment and order dated 21.10.2003 declared the election of Smt. Shanti Singh Bhandari void on the ground that she could not secured votes equal to quota or more than the quota. The learned District Judge, Pithoragarh has referred the judgment of the Apex Court in the case of **Jaidrath Singh & another Vs. Jivendra Kumar & another reported in [2000 (3) SCC 154]** and the judgment given by this Court in the case of Pooran Singh.

Learned counsel for the appellant has submitted that this Court in the case of Pooran Singh allowed the appeal on 30.09.2003, relying on the judgment of the Apex Court in the case of Jaidrath Singh. Against the judgment dated 30.09.2003 passed by this Court in A.O. No. 196 of 2003. Civil Appeal No. 2717 of 2004 was filed before the Hon'ble Supreme Court which was allowed by the Hon'ble Supreme Court on 27.04.2004. While allowing he appeal, the Hon'ble Supreme Court has also considered the case of Jaidrath Singh (supra) which was the basis for allowing the appeal of Pooran Singh by this Court.

The case of Pooran Singh relates to the election of Adhyaksha, Zila Panchayat and the U.P. Zila Panchayat (Election of Adhyaksha and Up Adhyaksha and Settlement of Election Disputes) Rules 1994 were applicable in the case of Pooran Singh. Under Rules Determination of Results is provided under rule26:-

> ***"Rule26:-*** *After all the valid ballot papers have been arranged in parcels according to the first preference recorded for each candidate, the Returning Officer shall proceed to*

determine the result of the voting in accordance with the instructions contained in Schedule II to these rule."

In Schedule II instructions are given for the Determination of Result and illustration has also been given in schedule II.

In the present case the U.P. Kshettra Panchayats (Election of Pramukhs and Up Pramukhs and Settlement of Election Disputes) Rules 1994 are applicable. Rule 27 of the rules provides as under:-

"Determination of result:- *After all the valid ballot papers have been arranged in parcels according to the first preference recorded for each candidate, the Returning Officer shall proceed to determine the result of the voting in accordance with the instructions contained in Schedule II to these rules."*

Thereafter, in the schedule II instructions are given for the Determination of Result. Rule 27 of U.P. Kshettra Panchayats (Election of Pramukhs and Up-Pramukhs and Settlement of Election Disputes) Rule 1994 and Rule 26 of U.P. Zila Panchayats (Election of Adhyaksha and Up Adhyaksha and Settlement of Election Disputes) Rules 1994 are same and the illustrations given in the Second Schedule of both the rules are also the same.

The controversy raised in the present appeal ah already been settled by the Hon'ble Supreme Court in the case of **Lalit Mohan Pande Vs. Pooran Singh & others in Civil Appeal No. 2717 of 2004.** The Hon'ble Supreme Court in the operative portion of the judgment has held as under:

"We are, therefore, of the opinion that the High Court committed an error in interpreting the statutory provisions laying down procedures for declaration of result on the election of Adhyaksha Punchayat at district level. Applying he law as we have interpreted, the appellant should have been declared elected.

For the reasons aforementioned, we are of the opinion that the instant case the appellant herein had received, the highest number of first preference vote and in that view of the matter he should have been declared elected.

highest number of first preference vote and in that view of the matter he should have been declared elected."

In the present case, the appellant has received the highest number of first preference votes and been after eliminating Smt. Munni Pande and Smt. Asha Pal, she got highest votes.

Since this appeal is squarely covered by the judgment of Hon'ble Supreme Court in Civil Appeal No. 2717 of 2004, the appeal is allowed. Order passed by the District Judge, Pithoragah is quashed. No order as to cost.

(M.M. Ghildiyal J.)

17 June, 2004
ASWAL